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In re Application of	:	DECISION ON
Myers et al	:	
Application No.: 10/542,681	:	
PCT No.: PCT/US2004/002890	:	
Int. Filing Date: 03 February 2004	:	PETITION UNDER
Priority Date: 05 February 2003	:	
Attorney Docket No.: 43229A	:	
For: RUBBER MODIFIED POLYMERS FROM	:	
VINYL AROMATIC MONOMERS	:	37 CFR 1.181

This decision is in response to the "RESPONSE TO NOTICE TO FILE MISSING PARTS" filed 06 March 2006, requesting acceptance of a complete copy (4 pages) of the Declaration purportedly filed in the USPTO on 19 July 2005. Applicants have submitted, inter alia, a copy of the 19 July 2005 itemized postcard receipt.

BACKGROUND

On 19 July 2005, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1), and a copy of the international application. Applicant, however, did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because the Office received only 2 pages out of the 4 page executed Declaration at such time.

On 15 February 2006, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or declaration of the inventors, in compliance with 37 CFR 1.47(a) and (b), identifying the application by International application number and international filing date." It indicated that the current oath or declaration does not comply with 37 CFR 1.497(a) and (b) in that it: missing two inventors' signatures. It also stated that to avoid abandonment all of the items set forth above must be submitted within two (2) months from date of this Notice or by 32 months from date for the application.

On 06 March 2006 applicants submitted this petition indicating that the complete 4 page executed declaration was filed on July 19, 2005 and that the filed petition included a copy of the declaration submission on that date.

DISCUSSION

Applicant's present petition accompanied by a copy of the following documents, filed purportedly with the USPTO as indicated in the stamped postcard:

- (1) Executed Declaration (4 pages)
- (2) Transmittal Letter
- (3) Itemized Postcard

The postcard lists the above items and but is not date stamped by the USPTO .

MPEP 503 provides:

If a receipt for any item (e.g., paper or fee) filed in the USPTO is desired, it may be obtained by enclosing with the paper a self-addressed postcard specifically identifying the item. To ensure the receipt of return receipt postcards, users must either: (A) purchase already stamped postcards from the United States Postal Service (USPS) or affix postage stamps to their postcards; or (B) if a postage meter is used, ensure that the meter postmark does not show the date. Any return receipt postcard containing a dated meter postmark may not be delivered by the USPS to the address provided on the postcard. Users are reminded that they are solely responsible for placing the proper postage on self-addressed postcards that are submitted to the USPTO for the purpose of obtaining a receipt for correspondence being filed in the USPTO. Users should check with the USPS regarding postage and what size cards are acceptable to the USPS. Any return receipt postcard that does not contain sufficient postage or is not acceptable may not be delivered by the USPS to the address provided on the postcard, and, if returned to the USPTO, may be discarded.

The USPTO will stamp the receipt date on the postcard and place it in the outgoing mail. A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the **date stamped** thereon by the USPTO.

The person receiving the item(s) in the USPTO will check the listing on the postcard against the item(s) being filed to be sure they are properly identified and that all the items listed on the postcard are presently being submitted to the USPTO. If any of the items listed on the postcard are not being submitted to the USPTO, those items will be crossed off and the postcard initialed by the person receiving the items.

Upon return of a postcard receipt from the USPTO, the postcard receipt should be promptly reviewed by the person who filed the items to ensure that every item specifically denoted on the postcard was received by the USPTO. If the postcard receipt has been annotated to indicate that a particular item denoted on the postcard was not received

by the USPTO, the postcard receipt will not serve as *prima facie* evidence of receipt of that item in the USPTO.

Applicant's postcard is not accepted as *prima facie* that a complete Declaration was deposited with the U.S. Patent and Trademark Office on 19 July 2005 because the copy of the itemized postcard submitted is not date stamped by the USPTO.

Therefore, the date of receipt of the Declaration is 06 March 2006, which is the date that a complete declaration was received at the Office. Accordingly, The 35 USC 371(c)(1), (c)(2), and (c)(4) date of this application is **06 March 2006**

DECISION

The petition under 37 CFR 1.181 is **DISMISSED**, without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181". Failure to respond will result in the ABANDONMENT of the application. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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